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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CALOP BUSINESS SYSTEMS, INC., Plaintiff and Respondent, v. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1877, Defendant and Appellant.	B242073 (Los Angeles County Super. Ct. No. BC470342)

APPEAL from an order of the Superior Court of Los Angeles County, Ernest M. Hiroshige, Judge. Reversed and remanded with directions.

Weinberg, Roger & Rosenfeld, Antonio Ruiz, Gary P. Provencher and Jacob J. White for Defendant and Appellant.

Law Office of Juan Hong and Juan Hong for Plaintiff and Respondent.

This appeal arises from statements that representatives of Service Employees International Union, Local 1877 (the Union) made following the decision by Calop Business Systems, Inc., doing business as Calop Aeroground Services (Calop), to withdraw recognition of the Union as the bargaining representative for its non-clerical and non-supervisory employees. We must determine whether Calop's first amended complaint (complaint) against the Union, alleging trade libel, intentional interference with contract, and intentional interference with prospective economic relations based upon these statements, should have been stricken in its entirety under Code of Civil Procedure section 425.16,[1] commonly called the anti-SLAPP statute.[2] The trial court partially denied the special motion to strike and permitted the trade libel and intentional interference with prospective economic relations causes of action to go forward based upon five of 11 statements alleged in the complaint. The Union appeals. Upon our independent review, we reverse the trial court's order partially denying the special motion to strike and conclude the motion should have been granted because Calop has not met its burden to establish the probability of prevailing on the merits.

FACTUAL AND PROCEDURAL HISTORY

1. *Calop's Recognition of the Union and Withdrawal of Recognition*

Calop provides security and passenger services as a subcontractor for airlines operating out of the Tom Bradley Terminal at the Los Angeles International Airport (LAX). In May 2009, Calop and the Union entered into a Cardcheck Election Agreement (Agreement), and thereafter the Union obtained signed authorization cards from a majority of Calop's non-clerical, non-supervisory employees. As a result, in December 2009, Calop entered into a voluntary agreement to recognize the Union as the bargaining representative of its non-clerical, non-supervisory employees at LAX.

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[1] Undesignated statutory references are to the Code of Civil Procedure.

[2] "SLAPP" is an acronym for "strategic lawsuits against public participation." (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57, fn. 1.)

By February 26, 2010,[3] however, a majority of Calop employees had signed a decertification petition filed with the National Labor Relations Board. On April 5, Calop attempted to withdraw recognition of the Union. The Union and Calop differ on the circumstances surrounding the withdrawal, but both agree the divisive issue was healthcare benefits.

On behalf of the represented Calop employees, the Union negotiated a collective bargaining agreement (CBA) that addressed wages and healthcare benefits, while negotiations continued on other working conditions. In response, Calop purportedly used the CBA as an excuse to lay off approximately 30 people and to implement split shifts for almost all of its employees. Calop managers also reportedly were involved in circulating anti-union petitions. Following the April 5 letter withdrawing recognition, Calop stopped paying healthcare benefit premiums.

Calop maintains the employees signed and filed the decertification petition because the Union's negotiator misrepresented to the company that employees had agreed the negotiated healthcare benefit could be paid directly into the Union's health trust fund. The company previously had the option of paying the healthcare benefit as regular wages. The Union also allegedly misled Calop employees to believe the company paid 100 percent of the healthcare premium, when Calop paid the healthcare benefit pursuant to the Living Wage Ordinance.

2. *The Union's Federal Lawsuit Against Calop*

The Union filed suit in U.S. District Court against Calop, alleging the company initiated a campaign to undermine its status. The district court granted in part and denied in part Calop's summary judgment motion. The district court thereafter concluded it did not have jurisdiction to proceed with Calop's state law claims against the Union, alleging defamation, intentional interference with contractual relations, and intentional interference with prospective economic relations. Calop then filed this state court action.

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[3] Unless otherwise indicated, all further dates refer to 2010.

3. *State Court Action Against the Union*[4]

The complaint alleges that the Union started a "crusade" to destroy Calop. Allegedly, when the company withdrew recognition of the Union, the Union made false and defamatory statements regarding (a) a connection between Calop and the defunct Atlas Air Group (Atlas) (paragraphs 53, 57, 59, 61), and (b) a wage and hour claim filed with the California Labor Commissioner against Calop for unpaid wages (paragraph 66). These allegations are the foundation for trade libel and slander (first cause of action) and intentional interference with prospective economic relations (third cause of action), the remaining causes of action alleged in the complaint.[5]

a. *Calop's Connection to the Defunct Atlas Air Group*

Following Calop's attempt to withdraw recognition of the Union, the Union wrote articles, drafted a letter to Calop's clients, and informed airlines doing business at LAX about the company's connection to Atlas. The articles appeared in "LAX Alert," which is published by the Union's Airport Workers United Campaign and is widely distributed to members of the Los Angeles City Council, the Board of Airport Commissioners, airlines operating at LAX, and Union members.

(1). *April 5 LAX Alert Article (Paragraph 53)*

The LAX Alert contained the following allegedly defamatory article: " 'The principals of an ousted airline service company at LAX have been running another major airline service company, Calop Aeroground Services (Calop), despite having owed over $300,000 to the City of Los Angeles, even as residents of the City of Los Angeles face cuts in city services, reduced fire and police protection, and steep rate hikes for utilities.

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[4] Our recitation of the facts is limited to the allegedly defamatory statements the trial court concluded were not subject to the special motion to strike.

[5] The trial court granted the special motion to strike the second cause of action alleging intentional interference with contract. Calop did not appeal from the order. (§ 904.1, subd. (a)(13).) Thus, the company has forfeited any claim of error on appeal. (*Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439.)

"In 2002, an airline contractor named Atlas Air Group (Atlas) defaulted on rent payments to Los Angeles World Airports [LAWA] to the tune of $314,184.82. After exhaustive attempts by the Department to collect the money owed, it was forced to write off the large debt as a loss in June 2005. LAWA seems to have thought it was done dealing with the deadbeat contractor. . . . Little did they know, that the very same people that ran Atlas Air Group had already begun operating another airline service company under the name Calop Aeroground Services. In a move that obscured the ties between Atlas and Calop, Connie Chong, and other principals including Jong I. Shin, and Young K. Chong, restructured their upper management, including changing titles of principals (and in some cases the spelling of the names of the principals), while retaining their main operations managers.' "

(2). *April 13 LAX Alert Article (Paragraph 57)*

The LAX Alert stated: " 'Instead of continuing negotiations with its employees over other contract items, however, Calop launched a rigorous union busting campaign that resulted in fear and confusion among the workers. . . . A prior *LAX Alert* issue detailed broken promises of the principals of Calop, including debts owed to the Los Angeles taxpayers in excess of $300,000, and egregious security violations that threatened the safety of the traveling public. Their markedly poor record of following through on agreements seriously calls into question whether or not these individuals should be permitted to continue operating at LAX.' "

(3). *April 27 Letter to Airlines (Paragraph 59)*

A letter from the Union to the airlines and Calop's clients stated: " 'SEIU has recently discovered that the owners and operators of Calop Aeroground previously operated a company that was removed from LAX after committing serious security violations. Our research also found that the individuals in question have large debts owed to LAWA. It is LAWA's policy to bar delinquent parties from operating at the airport, and it appears that the individuals involved may be subject to that policy. . . . We urge you to reconsider your relationships with Calop Aeroground Services, and consider

contracting with any of the other local responsible airline service companies who have demonstrated higher standard[s] of public safety and quality service.' "

(4). *May 5 Meeting with Airlines (Paragraph 61)*

A Union representative discussed the connection between Atlas and Calop at a meeting with the LAXTEC Management Council, which is responsible for the day-to-day operations at Tom Bradley International Terminal and manages the assets of the shareholder airlines that operate at the terminal. The Union representative allegedly told the meeting participants that "it is risky to do business with Calop" based on assertions that Atlas had committed serious security violations.

b. *Wage Claim Filed with the Labor Commissioner (Paragraph 66)*

The LAX Alert reported that " 'Earlier in the summer a Calop worker filed a claim with the Labor Commission for over $10,000 in overtime and missed meal and rest periods left unpaid by Calop. The company settled with the employee for a lesser amount.' "

4. *The Union's Motion to Strike*

The Union filed a special motion to strike the complaint pursuant to section 425.16 on the grounds that statements made during a labor dispute automatically concern "an important public interest" under subdivision (b), and these statements were made in a public forum in furtherance of the Union's constitutional right of free speech and association.[6] As relevant to the issues presented in this appeal, the Union presented

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[6] Subdivision (b)(1) of section 425.16 states: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." Subdivision (e) of section 425.16 states in pertinent part: "As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) . . . (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

evidence that the allegedly defamatory statements regarding Calop's connection to Atlas, and Atlas's mismanagement and security violations (paragraphs 53, 57, 59), were true or protected opinions. The Union further asserted that the statements related to Calop (paragraphs 57, 61) were protected opinion. And, the statement that a Calop employee filed a wage claim (paragraph 66) was true, and whether the employee settled or withdrew the claim did not support a trade libel cause of action.

Calop opposed the motion, presenting circumstantial evidence to establish that these statements were false and made with actual malice to constitute trade libel.

The trial court denied the motion to strike the first cause of action alleging trade libel and the third cause of action alleging intentional interference with prospective economic relations based upon the statements alleged in paragraphs 53, 57, 59, 61, and 66.

The trial court denied the Union's motion for attorney fees without prejudice. The Union did not present evidence of the amount of fees that would be reasonable, in light of the trial court's order partially granting the special motion to strike.[7]

The trial court also declined Calop's request for attorney fees on the ground that the special motion to strike was " 'frivolous or solely intended to cause unnecessary delay.' "[8] This timely appeal followed.

DISCUSSION

The Union contends the trial court erred in partially denying the special motion to strike and should have granted the motion because the statements the trial court focused on (paragraphs 53, 57, 59, 61, 66) are protected speech, and Calop did not meet its burden to proceed with this lawsuit as required under section 425.16. Under the appropriate standard of review, we agree.

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[7] As the prevailing defendant, the Union is entitled to recover attorney fees. (§ 425.16, subd. (c)(1).) In light of our ruling, the Union must bring the motion for attorney fees in the trial court.

[8] Calop seeks attorney fees on appeal on the ground that the Union filed a frivolous appeal. We find no merit in Calop's argument.

1. *Section 425.16 and Standard of Review*

Section 425.16 permits a defendant to file a special motion to strike any cause of action arising from an act in furtherance of the defendant's constitutional right of free speech in connection with a public issue or an issue of public interest. (§ 425.16, subd. (b)(1).) The statute establishes a procedure for the trial court to evaluate the merits of the lawsuit similar to a summary judgment procedure at an early stage in the lawsuit. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 312.) The purpose is to curtail the chilling effect meritless lawsuits may have on the valid exercise of free speech and petition rights, and the statute is to be interpreted broadly to accomplish that goal. (§ 425.16, subd. (a).)

Section 425.16 posits a two-step process for evaluating a special motion to strike. First, the court must decide whether the defendant has made a threshold showing that the plaintiff's cause of action arises from the defendant's free speech or petition activity, as specified in the statute. (§ 425.16, subds. (b)(1), (e).) Second, if the court finds that such a showing has been made, the burden shifts to the plaintiff, and the court must determine whether the plaintiff has established a probability of prevailing on the cause of action. (§ 425.16, subd. (b)(1), (2); *Episcopal Church Cases* (2009) 45 Cal.4th 467, 477.) If the plaintiff fails to meet its burden, the motion to strike is granted.

An order partially denying a motion to strike is an appealable order. (§§ 425.16, subd. (i), 904.1(a)(13).) We review the trial court's ruling de novo, exercising our independent determination by employing the two-step process contemplated in section 425.16, subdivision (b).

First, Calop concedes the Union's statements concerning its connection with Atlas meet the first prong. Thus, we must determine whether the trial court erred in concluding the LAX Alert article reporting a Calop employee filed a wage claim was not entitled to protection under section 425.16.

Second, we must determine whether Calop has met its burden to establish a probability of success on its claims, which, as shall be discussed, include causes of action based upon the allegations related to the wage claim (paragraph 66) and Calop's connection with Atlas (paragraphs 53, 57, 59, 61).

2. *First Prong: the Union Met its Burden to Establish that Filing a Wage Claim is Entitled to Protection under Section 425.16*

The Union contends that filing a wage claim with the Labor Commissioner for unpaid overtime and missed meal and rest periods constitutes a statement made in a public forum in connection with an issue of public interest, as well as conduct in furtherance of the exercise of the Union's right of free speech in connection with a public issue or an issue of public interest (§ 425.16, subd. (e)(3) & (4)). Calop responds that the trial court correctly determined an individual wage claim is not an issue of public interest. Broadly construing the anti-SLAPP statute, payment of unpaid overtime wages is an issue of public interest.

Section 425.16 does not provide a definition for "an issue of public interest." The statute, however, requires that there "be some attributes of the issue which make it one of public, rather than merely private, interest." (*Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132.) Statements made in connection with a public issue or an issue of public interest, for purposes of section 425.16, subdivision (e), are generally those that concern "a person or entity in the public eye [citations], conduct that could directly affect a large number of people beyond the direct participants [citations] or a topic of widespread, public interest [citation]." (*Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 924 (*Rivero*).)

The Union's argument primarily focuses on the protection afforded speech concerning labor disputes, involving a large number of people beyond the direct participants. We agree with the trial court that filing an individual wage and hour claim with the Labor Commissioner was an isolated incident and was not connected in any way to the labor dispute between the Union and Calop related to recognition of the Union and performance under the terms of the CBA. (See contra, *Monterey Plaza Hotel v. Hotel Employees & Restaurant Employees* (1999) 69 Cal.App.4th 1057, 1063-1064.)

We also reject the Union's argument that filing of an individual wage claim with the Labor Commissioner is a labor dispute within the meaning of section 527.3, subdivision (b)(4)(iii), and thus is a public issue under the anti-SLAPP statute. As stated

in *Rivero, supra,* 105 Cal.App.4th 913, the statutory definition of "labor dispute" provided in section 527.3, subdivision (b)(4)(iii) is for purposes of that statute and the section defines certain conduct the court may not enjoin related to labor disputes. (*Rivero,* at p. 929 & fn. 5.) Even if the statutory definition of "labor dispute" in section 527.3 did apply, we are not convinced that satisfying the statutory definition would compel the conclusion an individual wage claim is a public issue as the term is used in the anti-SLAPP statute.

Nevertheless, we recognize the duty to pay overtime wages is a well-established fundamental public policy affecting the broad public interest. "California courts have long recognized wage and hours laws 'concern not only the health and welfare of the workers themselves, but also the public health and general welfare.' [Citation.] . . . [O]ne purpose of requiring payment of overtime wages is ' "to spread employment throughout the work force by putting financial pressure on the employer . . . ." ' [Citation.] Thus, overtime wages are another example of a public policy fostering society's interest in a stable job market. [Citation.] Furthermore, . . . the Legislature's decision to criminalize certain employer conduct reflects a determination the conduct affects a broad public interest . . . . Under Labor Code section 1199 it is a crime for an employer to fail to pay overtime wages as fixed by the Industrial Welfare Commission." (*Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1148-1149.)

While statements made in connection with the wage claim involve only one Calop employee, the topic of unpaid overtime wages is of widespread public interest for purposes of the anti-SLAPP statute. For this reason, we find inapposite the cases that Calop cites in which statements are made in connection with an issue of interest to only a limited but definable portion of the public. (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 738 [statements concerning the suspension of a union business agent were made in connection with a public issue because ties to the union had not been completely severed]; *Du Charme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107, 117-119 [statements concerning job termination of a union's assistant business manager did not occur in the context of an ongoing

controversy, dispute, or discussion that warranted protection under the anti-SLAPP statute]; *Rivero*, *supra*, 105 Cal.App.4th at p. 924 [statements that a particular supervisor of a staff of eight was fired after union members complained of his activities were not made in connection with an issue of public interest, even though his conduct implicated a public policy against unlawful workplace activities].) Accordingly, the trial court erred in concluding the Union failed to meet its burden. The burden, therefore, shifted to Calop to show a probability of success on the merits.

3. *Second Prong: Calop Did Not Establish Probability of Success on the Merits*

The Union contends Calop has not established the probability of prevailing on the merits because the evidence submitted to oppose the motion does not establish the statements made regarding the connection between Atlas and Calop (paragraphs 53, 57, 59, 61), and related to the wage claim (paragraph 66) constitute actionable trade libel. While Calop has made the minimal evidentiary showing to establish the challenged statements are false, it has not met its burden to establish the statements were made with actual malice, a necessary element to establish trade libel for statements made during a labor dispute (paragraphs 53, 57, 59, 61). And, with respect to the wage claim (paragraph 66), Calop has not established disparagement, an essential element of that claim.

a. *Trade Libel*

By its terms, section 425.16, subdivision (b)(1) requires the court to determine whether "the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." In making this determination, we accept as true the evidence favorable to Calop. (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.) We do not weigh the evidence, and evaluate the Union's evidence only to determine whether the Union has defeated the evidence submitted by Calop as a matter of law, such as by establishing a defense or by showing the absence of a necessary element. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3; *1-800 Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568, 585.)

Although distinct torts, trade libel and defamation are similar in that both impose liability for publication to third parties of a false statement. (*Polygram Records, Inc. v. Superior Court* (1985) 170 Cal.App.3d 543, 549.) "Trade libel is the publication of matter disparaging the quality of another's property, which the publisher should recognize is likely to cause pecuniary loss to the owner. [Citation.] The tort encompasses 'all false statements concerning the quality of services or product of a business which are intended to cause that business financial harm and in fact do so.' [Citation.] [¶] To constitute trade libel, a statement must be false." (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1010.) "Unlike personal defamation, the plaintiff seeking damages for trade libel must . . . carry the burden of proving that the disparaging statement is false." (*Guess, Inc. v. Superior Court* (1986) 176 Cal.App.3d 473, 479.)

(1). *Calop Has Met its Burden to Establish the Alleged Statements are False (Paragraphs 53, 57, 59, 61, 66)*

Calop established the falsity of statements in the LAX Alert that " '[t]he principals of an ousted airline service company at LAX have been running another major airline service company, Calop Aeroground Services (Calop), despite having owed over $300,000 to the City of Los Angeles." The LAX Alert listed Connie Chong, Jong I. Shin, and Young K. Chong as principals that "obscured the ties between Atlas and Calop" by changing titles and the spelling of their names. Young Chong submitted a declaration stating he is the president and sole owner of Calop, and he did not have an ownership interest in Atlas. Connie Chong stated she had no ownership interest in Calop, she was the owner of Atlas, she guaranteed Atlas's debt, and her debt was discharged in bankruptcy. Although the Union presented evidence to discredit this testimony, including testimony that several former Atlas employees worked at Calop, we do not weigh the evidence for purposes of determining whether Calop has met the minimal evidentiary burden to oppose a special motion to strike.

Calop also established articles in the LAX Alert accusing the company of committing "egregious security violations that threatened the safety of the traveling

public" were false. Mohammad "Jimmy" Khan, general manager of Calop, testified that Calop had never failed a security audit.

Finally, Calop established the LAX Alert statement that it had "settled" a wage and hour claim, falsely implied the claim had been resolved by mutual agreement between the two parties. The employee, however, withdrew his claim.

Under the anti-SLAPP statute's evidentiary standard, Calop was required to submit sufficient admissible evidence to show the company's claims have minimal merit, if the evidence is believed. (See *Anschutz Entertainment Group, Inc. v. Snepp* (2009) 171 Cal.App.4th 598, 638-639.) Thus, the record discloses under this evidentiary standard that Calop has disclosed facts showing the probability of prevailing on this element of a trade libel claim.

(2). *Calop Has Not Met its Burden to Establish Statements Related to Atlas were Actionable (Paragraphs 53, 57, 59, 61)*

Because statements regarding the connection between Atlas and Calop were made during the course of a labor dispute, the parties agree that Calop must establish the challenged statements were made with actual malice. (*Steam Press Holdings v. Hawaii Teamsters* (9th Cir. 2002) 302 F.3d 998, 1004.) The standard of actual malice is " 'a daunting one' " in which the "plaintiff must prove that the defendant was actually aware the contested publication was false or that the defendant made the publication with reckless disregard of whether it was true or false." (*Sutter Health v. UNITE HERE* (2010) 186 Cal.App.4th 1193, 1210-1211.) Reckless disregard means the defendant entertained serious doubts as to the truth of the publication. (*Id*. at p. 1210.) The plaintiff must prove actual malice by "clear and convincing evidence," which requires the evidence of "actual knowledge of the falsity of the statement, or reckless disregard for its falsity, must be of such a character 'as to command the unhesitating assent of every reasonable mind.' " (*Id*. at p. 1211.)

Calop has not met its burden to present evidence of actual malice. The declarations of Young Chong and Connie Chong indicate that the Union's statements regarding the ownership of Atlas and Calop were false, but there is no evidence,

circumstantial or otherwise, that these statements were made with actual knowledge of falsity or with reckless disregard. With respect to the discharge of the $300,000 debt Atlas owed, although the Union knew Connie Chong had filed for bankruptcy, the Union's belief that her husband, Young Chong, also may have been liable for the debt under California's community property laws is a mistaken belief of the law or might constitute negligence in failing to adequately research the law. This is insufficient as a matter of law to show actual knowledge of falsity or reckless disregard. As for the security violations Atlas committed, while Calop presented evidence it had never failed a security audit, the Union's belief the management team at Atlas was now running Calop and remained responsible for the reported security violations may have been incorrect, but it was not made with reckless disregard of whether it was true or false given the reported connection between the two companies. Thus, Calop did not meet its evidentiary burden to pursue a trade libel action based upon these statements.

(3). *Calop Has Not Met its Burden to Establish the Wage Claim Statement (Paragraph 66) was Actionable*

Trade libel is the disparagement of the "quality of a product," and actionable comments are limited to those that the defendant "should recognize [are] likely to cause pecuniary loss" (*ComputerXpress, Inc. v. Jackson*, *supra*, 93 Cal.App.4th at p. 1010), and " 'played a material and substantial part in inducing others not to deal with [the plaintiff]' " (*Erlich v. Etner* (1964) 224 Cal.App.2d 69,73).

With respect to the false statement that Calop settled the wage claim, Calop failed to present evidence that this statement, standing apart from the statements related to the labor dispute, would be understood as disparaging or persuade a consumer to avoid using its services. (See *ComputerXpress, Inc. v. Jackson*, *supra*, 93 Cal.App.4th at pp. 1010-1011.) When a statement is ambiguous or susceptible of an innocent meaning, it is incumbent on the plaintiff to show the defamatory meaning. (*Ibid*.) While Calop presented evidence that the employee withdrew the claim, it did not present evidence that an employer's decision to "settle" a claim, even if understood in a legal sense, is

disparaging for purposes of a trade libel claim. Accordingly, the trade libel cause of action should have been stricken from the complaint.

b. *Intentional Interference with Prospective Economic Relations*

Interference with prospective economic relations consists of "(1) an economic relationship between the plaintiff and a third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) an intentional act by the defendant, designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's wrongful act, including an intentional act by the defendant that is designed to disrupt the relationship between the plaintiff and a third party." (*Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 944.) The intentional act at issue must be "independently wrongful." (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1158.)

Here, the alleged independently wrongful conduct was the publication of defamatory statements regarding Calop's connection to Atlas, and the filing of a wage claim. We have concluded these statements either were not made with actual malice (paragraphs 53, 57, 59, 61) or were not disparaging (paragraph 66) to constitute independently wrongful conduct. Thus, Calop has not met the minimal evidentiary burden to establish the probability of prevailing on the merits of a claim for intentional interference with prospective economic relations. Accordingly, this cause of a action should have been stricken from the complaint.

DISPOSITION

The order partially denying the special motion to strike is reversed, and the matter is remanded with directions to grant the motion pursuant to Code of Civil Procedure section 425.16. Upon remand, the trial court shall conduct proceedings as are appropriate to determine reasonable attorney fees in connection with the Union's special motion to strike and on appeal pursuant to Code of Civil Procedure section 425.16, subdivision (c)(1). The Union shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.